U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

B5

File: [redacted] Office: California Service Center Date: AUG 24 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Form I-140 petition identifies [redacted] of Phoenix, Arizona, as the petitioner. The petition, however, was signed not by any [redacted] representative, but by the alien himself. Therefore, the alien and not Honeywell shall be considered to be the petitioner.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a customer service engineer at [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds an M.S. degree in Aviation Safety from [redacted] Warrensburg. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The application for a national interest waiver cannot be approved. The regulation at 8 C.F.R. 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The director noted this requirement in the notice of decision. The record does not contain this document, and therefore, by regulation, the petitioner has not properly

applied for a waiver of the job offer requirement, although discussion of the merits of the waiver claim appears below.

Counsel discusses the overall importance of the U.S. aviation industry and asserts that "[a]vionics experts, like [the petitioner], are needed in this industry so that the U.S. can continue to be a world leader to compete in the international market." Counsel contends that the petitioner "has gained recognition for his achievement and has made significant contributions [to] aviation safety engineering."

Along with documentation pertaining to [redacted] the petitioner submits letters from seven witnesses - specifically, four [redacted] officials, two officials of [redacted] client companies [redacted] and [redacted] and one of the petitioner's former professors from [redacted] Discussion of examples of these letters follows.

[redacted] general manager of [redacted] describes the petitioner's work:

> In his current position as a field service engineer, his duties include: technical support, customer assistance with new equipment and installation, diagnosing poor equipment performance, reliability data collection, as well as providing training to airline maintenance personnel. He has an excellent working relationship with the Chinese airline customers. This will contribute to the success of Honeywell's aviation products in the Asia marketplace.
>
> Our business is build on satisfied customers. The Customer Support organization plays a major role between [redacted] and its customers. After sales, it is the services [redacted] provides to the airlines that make for customer satisfaction. . . .
>
> The continued success of [redacted] depends largely on its ability to increase its business in Asia. China is currently the hottest market area in the aviation world.

The above letter suggests that the petitioner's chief assets are his contacts within the Chinese aviation industry. Other [redacted] officials praise the petitioner's dedication to his work and to [redacted] customer service goals. Principal Engineer [redacted] states that the petitioner provided him and other [redacted] team members "with the necessary language and negotiating skills to make the entry into service at China Eastern one of the smoothest and most successful projects I have been associated with." The individuals from client companies concur that the petitioner "has been doing an excellent job providing support." [redacted] asserts that the petitioner is "a top quality, dependable individual" who "has very attractive credentials for aviation industry employment."

These letters indicate that the petitioner is a competent and valued employee for [redacted] but it is not clear how the petitioner's activities are of greater overall benefit to the United States than the efforts of others in the petitioner's field.

The director denied the petition, stating that while the record demonstrates the petitioner's "strong ability and expertise in his field of endeavor," the record does not indicate that the petitioner "as an individual will benefit the national interest of the United States." Benefit to a particular corporation is not necessarily of proportional benefit to the United States.

On appeal, the petitioner submits a new letter from [redacted] senior technical service representative and acting manager for [redacted] states:

> [The petitioner] is a valuable asset in assisting [redacted] to provide quality and reliable technical support that our company has built a reputation on. He has an excellent working relationship and rapport with our many customers who are using [redacted] equipment. This is fundamental to maintain and promote our reputation and to support continued growth within the airline industry in this region. A basic business fact is that reliable customer support helps sell more products. Increased products exports are important to many businesses in the U.S. . . .
>
> [The petitioner] has been working with [redacted] providing service and training for their [redacted] This is a new product for our company that is installed on the [redacted] aircraft. One such system can be worth in excess of $200,000 per aircraft. We are planning for more sales and that will require more onsite technical support. We are confident in [the petitioner's] ability and experience to do the job.
>
> Also of importance is his work with [redacted] has a new Flight Management System on the [redacted] aircraft. This is an updated product that we expect to be installed on many of the aircraft. This will require more training and support and subsequent revenues for [redacted] A system of this kind will cost $300,000 per installation. . . .
>
> It is important for us to keep a competitive edge on our European manufacturers. Part of that 'edge' is customer service.

General assertions about the petitioner's abilities cannot establish eligibility for a national interest waiver, because Congress clearly indicated in the statute that aliens of exceptional ability are, generally, subject to the job offer requirement. While the petitioner's existing relationships with

many clients in East Asia are undoubtedly an asset for [redacted] the record does not show that the petitioner, as an individual, has been responsible for a nationally significant portion of the U.S. trade balance with nations in that region, or that the petitioner is solely or substantially responsible for [redacted] existing contracts with [redacted] who is himself based in Shanghai (according to his letterhead), discusses the importance of "on-site" personnel for these clients. Given that prolonged absence from the United States voids permanent resident status, and the existence of a [redacted] office in the petitioner's native country, it is not unreasonable to ask why the petitioner cannot continue to serve his employer while still in China, and why the petitioner must be a U.S. permanent resident to perform "on-site" customer service for clients in Asia.

[redacted] clearly places much reliance and confidence in the petitioner's skills, but the petitioner has not shown that the overall national (rather than corporate) impact of his work rises to the level of national interest; the petitioner has not shown that the United States as a whole is measurably better off with him, rather than another qualified engineer, in his current position at [redacted]

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.